

**JANUARY 11, 2008**MICHAEL W. DOBBINS  
CLERK, U.S. DISTRICT COURT**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**L. HARRISON BERNBAUM and  
DR. KEITH SCHRODER,

Plaintiffs,

v.

THE STANDARD FIRE INSURANCE  
COMPANY, a Connecticut Corporation,

Defendant.

**08 C 284**

Case No.

**JUDGE MANNING  
MAGISTRATE JUDGE NOLAN****COMPLAINT**

NOW Come Plaintiffs, L. Harrison Bernbaum and Dr. Keith Schroder (collectively "Plaintiffs"), by their undersigned attorneys, and for their Complaint against Defendant, The Standard Fire Insurance Company, respectfully state as follows:

**NATURE OF THE CASE**

1. This action is brought to obtain the insurance coverage which Defendant contracted to provide for damage to Plaintiff's Farr 395 sailboat (the "Sailboat").

**THE PARTIES**

2. L. Harrison Bernbaum, an individual, is a resident of Lake Forest, Lake County, Illinois, co-owner of the Sailboat and the policyholder under Policy Number 945707517-840-1 (the "Policy") issued by Defendant for the period of January 1, 2006 to January 1, 2007. A true and correct copy of the Policy is attached hereto as Exhibit A.

3. Dr. Keith Schroder, an individual, is a resident of Hoffman Estates, Cook County, Illinois, and co-owner of the Sailboat.

4. On information and belief, Defendant is a Connecticut corporation having its principle place of business outside of Illinois.

**JURISDICTION AND VENUE**

5. Jurisdiction is proper in this Court under 28 USC § 1332 because the matter in controversy in this action exceeds the sum of \$75,000, exclusive of interest and costs, and is between citizens of different states.

6. Venue is proper in this Court under 28 USC § 1331(a)(2) because the events giving rise to the claims occurred and the property that is subject to the action is within this Court's judicial district.

#### **BACKGROUND FACTS**

7. On or about July 23, 2006, while Plaintiff was participating in the annual Chicago to Mackinaw Island sailboat race aboard the Sailboat, heavy weather conditions were encountered.

8. Unknown to Plaintiff at the time, the heavy weather conditions caused an internal structural component of the Sailboat located near the bow to fail.

9. Substantial damage occurred to the Sailboat as a direct and proximate result of this structural component failing.

10. Much later, Plaintiff discovered that the above damage had occurred. On or about August 8, 2007, and promptly after discovering the damage to the Sailboat, Plaintiff presented Defendant with a complete and proper claim (the "Claim") for insurance benefits under the Policy.

11. From on or about August 2, 2007 until on or about December 10, 2007, Defendant investigated the Claim.

12. On or about December 10, 2007, Defendant sent Plaintiff a letter (the "Letter," a true and correct copy of which is attached as Exhibit B) denying the Claim for the following alleged reasons:

- a. That the "damages are not attributable to a single fortuitous occurrence but are more indicative of wear and tear," and
- b. That Plaintiff's notice of loss was "untimely." Letter at 2.

13. Because the damages to the Sailboat were caused by exposure to heavy weather on or about June 23, 2006, they were in fact the result of a single fortuitous occurrence and are not within the Policy's coverage exclusion for "wear and tear" cited by Defendant.

14. Alternatively, the structural component of the Sailboat which failed on or about June 23, 2006, failed because of a latent manufacturing defect. Under the Policy, Defendant is obligated to cover any loss or damage resulting from such a latent defect.

15. Plaintiff's notice of Claim to Defendant was timely because it was provided promptly after the damage to the Sailboat was discovered by Plaintiff.

16. Alternatively, Defendant waived any timeliness objection by accepting the Claim for investigation when it was filed on or about August 2, 2007, more than one year after the date of the loss.

**COUNT I**

**BREACH OF CONTRACT**

17. Plaintiff restates and re-alleges paragraphs 1 through 16 as if fully set forth herein.

18. Plaintiff and Defendant entered into a valid and binding contractual agreement consisting of the Policy.

19. Plaintiff rendered all performance required of him under the Policy.

20. Defendant materially breached and repudiated the Policy by, among other things, denying coverage of Plaintiff's Claim.

21. As a direct and proximate result of Defendant's breach and repudiation of the Policy, Plaintiff has suffered damages in an amount to be shown at trial but in excess of \$75,000.

WHEREFORE, Plaintiffs respectfully requests this Court to enter judgment in their favor and against Defendant Standard Fire Insurance Company as follows:

- a. For damages for breach of contract in an amount to be shown at trial;
- b. For such other relief as the Courts may deem just and proper.

Plaintiffs demand trial by jury as to all issues that may be so tried.

Dated: January 11, 2008

Respectfully submitted,

**L. HARRISON BERNBAUM,  
DR. KEITH SCHRODER, Plaintiffs**

By: s/ Leland W. Hutchinson  
One of Their Attorneys

Leland W. Hutchinson, Jr. (1294873)  
Gina M. DiBella (6282745)  
**FREEBORN & PETERS LLP**  
311 S. Wacker Dr., Suite 3000  
Chicago, Illinois 60606  
(312) 360-6000

# **EXHIBIT A**



## **YOUR TRAVELERS YACHT POLICY**

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### **from Travelers**



## TRAVELERS YACHT POLICY

The Standard Fire Insurance Company  
 One of The Travelers Property Casualty Companies  
 One Tower Square, Hartford, CT 06183

## Name Insured

HANK BERNBAUM  
 330 S GREEN BAY ROAD  
 LAKE FOREST, IL 60045

## Your Agent's Name and Address

DEANE H TANK INC  
 P O BOX 834  
 NAPERVILLE, IL 60566

Your Policy Number: 945707517 840 1  
 Transaction Premium: \$1,550.00  
 Total Policy Premium: \$1,550.00

For Policy Service Call: (312) 876-8680  
 For Claim Service Call: 1-800-772-4482  
 For Billing Questions Call: 1-800-550-7716

## Policy Period

From: 01-06-07 To: 01-06-08 12:01 A.M.  
 Standard Time at the Residence Premises

Transaction Type Renewal  
 Transaction Number 7

## Yacht Description

#	Year	Length	Manufacturer	Model	HP Hull ID
1	2001	39'	CARROLL	F395	0040 UNKNOWN

Coverages	Amount of Insurance/ Limit of Liability	Deductible	Premium
<b>Section Three</b>			
Yacht and Equipment Physical Damage	\$ 250,000	\$ 2,500	\$ 1,228.00
Dinghy	Included if 16 feet or under and 25 hp or less	\$ 250	Included
<b>Section Four</b>			
Personal Property	\$ 1,000	\$ 250	Included
<b>Section Five</b>			
Commercial Towing and Assistance	\$ 1,000	None	Included
<b>Section Six</b>			
Protection and Indemnity Longshoremen's & Harbor Workers' Compensation	\$ 500,000 Statutory Limits	None None	\$ 222.00 Included
<b>Section Seven</b>			
Medical Payments	\$ 5,000	None	Included
<b>Section Eight</b>			
Uninsured Boat	\$ 500,000	None	Included

## Endorsements

44130 (11-99) Special Amendatory Endorsement	Included
44131 IL (11-99) Amendatory Endorsement - Illinois	
44141 (11-99) Leading Edge Endorsement	\$ 100.00

TOC4101

## YOUR TRAVELERS YACHT POLICY QUICK REFERENCE

<b>DECLARATIONS PAGE</b>	
<b>Your Name and Address</b>	
<b>Policy Period</b>	
<b>Your Insured Property</b>	
<b>Coverages, Amounts of Insurance and Deductibles</b>	
<b>Endorsements</b>	
<b>Credits</b>	
<b>Policy Premium</b>	
<b>Navigation Territory</b>	
<b>Layup Information</b>	
<b>Loss Payee</b>	
	<b>Begins On Page</b>
<b>DEFINITIONS</b>	
<b>SECTION ONE:</b>	<b>General Policy Conditions and Limitations</b>
Insuring Agreement	2
Limits of Liability	2
Policy Period	2
Changes in Policy	2
Private Pleasure Use Warranty	2
Transfer of Interest	2
Canceling This Policy	2
Return Premiums	2
Renewal of Coverage	2
Conformity to State Law	3
Broadening Coverage	3
Other Insurance	3
Navigation Warranty	3
Suit Against Us	3
No Benefit to Others	3
<b>SECTION TWO:</b>	<b>General Policy Exclusions</b>
Concealment, Misrepresentation or Fraud	3
Dishonest or Illegal Acts	3
Intentional Act	3
War, Confiscation, Nuclear or Radiation	3
Racing	4
<b>SECTION THREE:</b>	<b>Physical Damage Coverage</b>
Loss Payment	4
Physical Damage Coverage	4
Exclusions	5
Unrepaired Damage	5
Deductible Amount	5
Protection and Recovery Expenses	5
Equipment on Shore	5

**YOUR TRAVELERS YACHT POLICY  
QUICK REFERENCE**

Begins  
On Page

<b>SECTION FOUR:</b>	<b>Personal Property Coverage</b>	6
<b>SECTION FIVE:</b>	<b>Commercial Towing and Assistance Coverage</b>	6
<b>SECTION SIX:</b>	<b>Protection &amp; Indemnity Coverage</b>	6
<b>SECTION SEVEN:</b>	<b>Medical Payments Coverage</b>	7
<b>SECTION EIGHT:</b>	<b>Uninsured Boat Coverage</b>	8
<b>SECTION NINE:</b>	<b>Coverage for Non-Owned and Newly Acquired Yachts</b>	8
<b>SECTION TEN:</b>	<b>Your Duties After a Loss</b>	
	Notice of Loss	8
	Assistance in Loss Settlement	9
	Contractual Liability	9
	Claim Against Others	9
	Examination Under Oath	9
	Proof of Loss - Physical Damage	9
	Protection of Property - Physical Damage	9
	Support of Claim	9
<b>SECTION ELEVEN:</b>	<b>Loss Settlement Conditions</b>	
	Loss Adjustment - Physical Damage	9
	Destruction Ordered by Authorities	9
	Appraisal - Physical Damage	10
	Loss Payee	10
	Reservation of Rights	10
	Abandonment of Property	10
	Salvage	10

## TRAVELERS YACHT POLICY

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### DEFINITIONS

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Throughout this policy, "you" and "your" refer to the named insured shown in the declarations, and as defined in the definition of "Insured". "We", "us", and "our" refer to the Company providing this insurance. Certain words which require explanation are defined either in the part of the policy they are used or below if used throughout the policy.

**"Accidental Fuel Spill"** means the unintentional discharge, spillage or leakage of petroleum based fuel, oil or lubricants which are required for the normal operation and use of your yacht.

**"Agreed Value"** means the value of the covered property as shown on the declarations - without deduction for any depreciation.

**"Bodily Injury"** means bodily harm, sickness, or disease, including required care, loss of services and death that results.

**"Constructive Total Loss"** means that the reasonable expense of recovering and repairing the Yacht and equipment equals or exceeds the amount of insurance shown in the declarations.

**"Dinghy"** means any boat, 16 feet or under and 25 horsepower or less unless otherwise scheduled, used in conjunction with the your yacht for the primary purpose of transporting from your yacht's mooring to the shore.

**"Direct Physical Loss"** means the actual damage to your covered property resulting directly from a covered peril.

**"Fishing Equipment"** means rods, reels, lures and rigs, lines, tackle boxes, electronic gear used in locating and catching fish and similar equipment.

**"Insured"** refers to (1) you; (2) your spouse and/or relatives who reside in your household (resident relative); and 3) any person or legal entity while operating your yacht with an insured's permission and without a charge or fee. **"INSURED" DOES NOT INCLUDE:** (A) A PAID CAPTAIN OR CREW MEMBER; OR (B) ANY PERSON OR ORGANIZATION OPERATING, EMPLOYED BY, OR THE AGENT OF A MARINA, BOAT REPAIR YARD, YACHT

**CLUB, SALES AGENCY, BOAT SERVICE STATION, OR OTHER SIMILAR ORGANIZATION.**

**"Latent Defect"** means a hidden flaw in the material existing at the time of the original building of the yacht which is not discoverable by you, by ordinary observation or methods of testing.

**"Lay-up"** means taking your yacht out of active service. During the lay-up period shown in the declarations, your yacht cannot be used for any boating activities or as living quarters by you or any insured. Lay-up can include either storage on land or afloat.

**"Navigational Territory"** means the navigation area shown in the declarations.

**"Occurrence"** means a loss or accident, including continuous or repeated exposure to substantially the same general harmful conditions during the policy period, which results in bodily injury or property damage.

**"Policy"** means your Travelers Yacht Policy, including the application, declarations, applicable forms and any endorsements.

**"Property Damage"** means the actual physical damage to or destruction of tangible property. It includes loss of use of such property.

**"Punitive Damages"** means damages that are awarded to punish or deter wrongful conduct to set an example, to fine, penalize or impose a statutory penalty, or any similar exemplary damages that are awarded for other than compensatory damages.

**"Uninsured Boat"** means a watercraft that does not have a bodily injury policy in force or, if the policy is in force, the insurer denies coverage or becomes insolvent. It also refers to a hit-and-run watercraft whose operator or owner cannot be identified and hits you or any insured or a watercraft which you or any insured are occupying. An uninsured boat does not include a watercraft:

1. owned by, furnished, or available for the regular use of you or a resident relative;

2. owned by any governmental unit or agency.

"Yacht" means the yacht described in the declarations, including its hull, propulsion machinery, spars, sails,

fittings, furniture and permanently installed equipment on board your yacht.

## **SECTION ONE: GENERAL POLICY CONDITIONS AND LIMITATIONS**

### **A. INSURING AGREEMENT**

This marine insurance policy is a legal contract between you and us.

We agree to provide the insurance coverage described in this policy in return for your payment of the premium when due and compliance by you and any insured with all terms and conditions of this policy.

### **B. LIMITS OF LIABILITY**

Unless otherwise stated in this policy or any endorsements, the limits of liability shown in the declarations are the most we will pay for all damages or claims resulting from any one occurrence.

### **C. POLICY PERIOD**

This policy applies only to a covered loss which occurs during the policy period as shown in the declarations.

### **D. CHANGES IN POLICY**

This policy contains all of the agreements between you and us. The terms may not be changed or waived except by endorsement issued by us.

### **E. PRIVATE PLEASURE USE WARRANTY**

Coverage under this policy applies only if your yacht is used for private pleasure purposes, including recreational boating and leisure time activities. Coverage will not apply if your yacht is used for charter, hire, to carry persons or property for a fee or for any other commercial or business use unless prior written consent has been obtained from us. Business entertainment for which there is no direct remuneration will be considered as being private pleasure use.

### **F. TRANSFER OF INTEREST**

All coverage provided by us will terminate upon the sale, assignment, pledge or transfer of your ownership or insurable interest in the covered property unless prior written consent has been obtained from us. However, if you should die during the policy period, we will automatically cover your legal representative as the Named Insured with respect to his or her interest in your covered property.

### **G. CANCELING THIS POLICY**

Your cancellation - You may cancel this policy at any time by returning it to us or our authorized representative stating the future date you want it to be canceled.

Nonpayment of premium - We may cancel this policy by giving you 10 days written notice if you fail to pay the premium by the due date.

Our cancellation - If you have paid the premium when due and we decide to cancel this policy, we will give to you at least 30 days written notice of our decision to cancel this policy.

Evidence of mailing of our cancellation notice to you at the address shown in the declarations shall be sufficient proof that you have been notified.

Total Loss or Constructive Total Loss - In the event of a Total Loss or Constructive Total Loss, this policy will terminate immediately thereafter.

### **H. RETURN PREMIUMS**

If this policy is canceled, you may be entitled to a premium refund. If you cancel the policy for any reason except your interest in the yacht being sold, any return premium will be computed on a short rate basis. If we cancel the policy or if your interest in the yacht is sold, any return premium will be computed on a pro-rata basis. Any return premium will be paid to you as soon as possible after the cancellation. In the event of a Total Loss or Constructive Total Loss, premium will be considered fully earned and no refund will be made.

### **I. RENEWAL OF COVERAGE**

Renewal - We may offer to continue this policy by providing you a renewal declarations along with a bill for the premium. Any changes in policy provisions or amounts of coverage will be shown in the renewal declarations.

Nonrenewal - If we decide not to renew this policy, we will give to you at least 30 days notice of our decision not to renew. Evidence of mailing of our nonrenewal notice to you at the address shown in the declarations shall be sufficient proof that you have been notified.

**J. CONFORMITY TO STATE LAW**

When a policy provision conflicts with the law of the state in which this policy is issued, the minimum requirements of the state law will automatically apply.

**K. BROADENING COVERAGE**

If we adopt any change during the term of this policy applicable to all policyholders which broadens coverage without additional premium, the broader coverage will automatically apply to your policy.

**L. OTHER INSURANCE**

**Physical Damage** - If at the time of loss, there is any other applicable insurance, we will pay only that proportion of the loss that the amount recoverable under this policy bears to the total amount recoverable under all applicable insurance.

**Protection & Indemnity, Medical Payments and Uninsured Boater** - Any insurance provided by this policy will be deemed excess over any other valid and collectible insurance.

**Overland Transportation** - Any insurance provided by this policy will be deemed excess over any other valid and collectible insurance.

**M. NAVIGATION AND LAY-UP WARRANTY**

This policy applies only to losses that occur within the Navigational Territory and are in keeping with the Lay-up period, if any, shown in the Declarations.

**Events Beyond Your Control** - If the navigational territory or lay-up period shown in the declarations is breached due to events beyond your control, coverage for your yacht will continue provided you give us written notice of the breach within 10 days after you learn of the breach and pay any additional premiums due us for this extension of coverage.

**Events Within Your Control** - Coverage will not apply if there is any breach of navigational territory or lay-up period within your control, unless you have informed us directly or through our authorized representative and we agree to any extension of coverage. You must pay any additional premium due to us for this extension.

**N. SUIT AGAINST US**

No action will be brought against us unless there has been full compliance with all policy provisions; and such action is started within one year after loss or damage occurs.

**O. NO BENEFIT TO OTHERS**

No person or organization which has custody of your covered property and is to be paid for services will benefit from this insurance.

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**SECTION TWO: GENERAL POLICY EXCLUSIONS**

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The following exclusions apply to all coverages provided under this policy:

**WE DO NOT COVER ANY LOSS OR DAMAGE CAUSED BY:****A. CONCEALMENT, MISREPRESENTATION OR FRAUD**

The coverage provided by this policy depends on the statements you made in your application. If you or any insured intentionally conceals or misrepresents any material fact or circumstance, whether before or after a loss, this policy is VOID and you will no longer be protected by it.

**B. DISHONEST OR ILLEGAL ACTS**

We do not cover any loss, injury, damage or expenses caused by the dishonest or illegal act of any covered person, regardless of whether or not such person is convicted of such act by a criminal court.

**C. INTENTIONAL ACT**

We do not cover any loss, damage, injury, or loss of life which is intentionally caused by any covered person, regardless of whether or not such person is convicted of such act by a criminal court.

**D. WAR, CONFISCATION OR NUCLEAR**

We do not cover any loss, damage, injury or loss of life which is intentionally caused by:

1. War, including undeclared war, civil war, insurrection, rebellion, revolution, war-like act by military force or military personnel, destruction or seizure for a military purpose, or any consequences of these actions.
2. The lawful or unlawful capture, seizure, confiscation, requisition or detainment of your yacht by a civil or military authority, or an attempt by any of these.
3. The hazardous properties, including radioactive, toxic or explosive properties of nuclear material, whether it is source material or by-product material as defined in the Atomic Energy Act of 1954

or in any law amendatory thereof - no matter how it is caused.

#### E. RACING

We do not cover any loss that occurs or damages that result while your yacht is being operated in any capacity in an official race or speed test. However, this exclusion does not apply to sailboats or predicted log events.

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### SECTION THREE: PHYSICAL DAMAGE COVERAGE FOR YOUR YACHT AND EQUIPMENT

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This is an "agreed-value" policy for yachts.

#### A. LOSS PAYMENT

In the event of a covered loss, we will pay as follows:

1. **Total loss.** If the yacht is totally destroyed, lost or determined by us to be total constructive loss, we will pay the amount of coverage without deduction for depreciation. A yacht is considered lost when it is not found within 30 days of the date it is reported as missing.
2. **Partial loss.** Unless otherwise stated in this policy, we will pay the reasonable cost of repair or replacement of damaged or stolen property, without deducting any amount for depreciation, up to the amount of coverage.
3. **Property subject to depreciation.** We will only pay the actual cash value at the time of loss or damage to the following property:
  - (a) sails (including spinnakers);
  - (b) protective covers consisting of fabric, plastic, canvas or similar materials;
  - (c) carpeting, upholstery, cushions or fabric;
  - (d) outboard motors;
  - (e) outdrive units;
  - (f) machinery (including inboard engines and equipment) over 10 years old;
  - (g) batteries;

- (h) trailers;
- (i) personal property; and
- (j) dinghies.

Actual cash value shall be determined by the replacement cost of the covered property at the time of loss, less deduction for any depreciation. All total or partial covered losses of items listed in Section Three A.3 will be settled in this manner.

4. **Pairs, Sets or Parts.** In case of loss or damage to a pair or set, we may repair or replace any item to restore the pair or set to its value just before the loss; or pay the difference between the actual cash value of the pair or set before and after the loss. In case of loss to any part of covered property consisting of several parts when complete, we will pay only for the value of the part lost or damaged.
5. **Repairs.** If your yacht needs repair after a covered loss, we will pay the reasonable costs in accordance with:
  - (a) the manufacturer's specifications; or
  - (b) generally accepted repair practices.

#### B. PHYSICAL DAMAGE COVERAGES

We cover the following property against accidental direct physical loss or damage except as specifically excluded:

1. Your yacht scheduled in the declarations.

2. Your outboard motors scheduled in the declarations, including:
  - a. portable fuel tank and fuel lines;
  - b. electric starting equipment (including batteries); and
  - c. controls supplied by the manufacturer as part of the outboard motor.
3. Your auxiliary equipment consisting of boating equipment not permanently installed, but normally required and used to operate and maintain your yacht. However, Auxiliary Equipment does not include:
  - a. Outboard motors, trolling or auxiliary motors which are the primary mechanical source. These must be scheduled separately in the declarations;
  - b. personal watercraft, hydrocycles, jet skis, or similar types of vessels;
  - c. moorings, cradles, boat lifts, or similar apparatus used for the mooring or storage of your yacht;
  - d. Fishing Equipment and scuba gear; and
  - e. personal property.
4. Your trailer scheduled in the declarations provided it is used solely for the purpose of transporting your yacht.
5. Your dinghy as defined in this policy.

#### C. EXCLUSIONS

We do not cover loss or damage resulting from:

1. Wear and tear;
2. Gradual deterioration (including deterioration caused by weathering, insect, or marine life);
3. Damage caused by insects, animal, vermin and marine life;
4. Marring, scratching, weathering, fading or denting;
5. Inherent vice including wet or dry rot, rust or corrosion;
6. Osmosis, blistering, delamination or electrolysis;
7. The cost of replacing or repairing any item having a latent defect. However, any resulting loss or damage will be covered.

8. Loss or damage caused by or resulting from the insured's failure to properly winterize the yacht; or
9. Theft or unexplained disappearance of equipment or accessories unless: (a) your yacht is stolen at the same time; or (b) there is evidence that the property was forcibly removed or stolen.

#### D. UNREPAIRED DAMAGE

We do not cover any previously unrepaired damage which occurred either prior to the policy effective date shown in the declarations, or where you or any insured has previously received payment.

#### E. DEDUCTIBLE AMOUNT

We will adjust each claim for a covered loss to your insured property separately. The amount of each adjusted claim will be automatically reduced by the deductible amount shown on the declarations. We will treat any two or more covered losses resulting from the same occurrence as one claim.

The deductible amount will not apply in the case of a total loss or constructive total loss to your yacht. In the case of total losses on all other property besides Yacht & Equipment; the highest deductible amount will apply. We will treat any two or more covered losses resulting from the same occurrence as one claim.

#### F. PROTECTION AND RECOVERY EXPENSES

We will pay the reasonable costs you incur to protect or recover your yacht from further loss or damage following a loss. This coverage is in addition to those coverages included in Section Three of this policy. The most we will pay for these expenses is the amount of insurance equal to the Yacht & Equipment limit as shown in the Declarations. The deductible amount does not apply to this coverage.

#### G. EQUIPMENT ON SHORE

We will cover your auxiliary equipment when it is temporarily removed from your yacht for storage on shore. However, the amount of insurance on the yacht will be automatically reduced by the total value of this equipment while it is stored away from your yacht.

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## SECTION FOUR: PERSONAL PROPERTY COVERAGE

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We cover Personal Property as scheduled in the declarations which is owned by you, your guests, or unpaid crew members while it is aboard your yacht, or while being loaded or unloaded. We will not pay more than the actual cash value of this property at the time of loss. Actual cash value shall be determined by the replacement cost of the covered property at the time of loss, less deduction for any depreciation.

### **EXCLUSIONS**

We do not cover **Fishing Equipment**, money, jewelry, furs, traveler's checks, coins or currency, motor vehicles, boating equipment, computer equipment (hardware or software) unless used exclusively aboard and for the service of the insured yacht, fine arts, paintings, antiques or any property which is separately described

and specifically insured in whole or in part, by this or any other insurance.

### **In addition, we do not cover:**

1. Wear, tear, gradual deterioration, corrosion or damage caused by animals, vermin, insects or marine life;
2. Changes in temperature or humidity;
3. Any mechanical or electrical failure or disturbance - unless it was caused by lightning; or
4. Mysterious disappearance or unexplained loss of any kind.

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## SECTION FIVE: COMMERCIAL TOWING AND ASSISTANCE COVERAGE

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We will reimburse you for the reasonable costs you incur resulting from the following services to your yacht if help is not available and you must pay to obtain commercial assistance:

1. towing to the nearest place where necessary repairs can be made;

2. delivery of gas, oil, parts or loaned battery (excluding the cost of these items themselves) or emergency labor while away from safe harbor; or
3. trailer roadside service including towing to the nearest place where necessary repairs can be made.

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## SECTION SIX: PROTECTION & INDEMNITY COVERAGE

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- A. We will pay damages for bodily injury or property damage for which an insured is legally responsible because of owning, maintaining or using your yacht.
- B. We will cover liability for which an insured is legally responsible under the United States Longshoremen's and Harbor Worker's Compensation Act, Federal Jones Act, Death on High Seas Act or General Maritime Law.

Unless otherwise endorsed on this policy, the most we will pay is \$25,000 for any one occurrence for which the insured is legally responsible for the loss of life or bodily injury to any paid captain or crewmember while acting in their official capacity as the paid captain or crewmember aboard your yacht. This limitation does not apply to crew em-

ployed for less than 15 days total during the policy term. This coverage is included in the limit of liability for Protection & Indemnity as shown in the declarations, and does not increase the total limit of liability for any one occurrence covered by this policy.

- C. If you are legally obligated to remove or otherwise dispose of the wreck of your yacht, we will pay the reasonable cost of removal or the amount for which you are held liable for failure to dispose of the wreck.
- D. We will pay the reasonable cost for the proper containment, clean up and resulting damage caused by an accidental fuel spill that comes from your yacht for which you are legally responsible provided you:

1. immediately notify the United States Coast Guard, or other appropriate state, local or federal authority of the fuel spill as required by law;
2. take appropriate action as soon as possible including making any necessary temporary repairs to fix the cause of the spill and prevent further spillage; and
3. provide all reasonable cooperation and assistance requested by a responsible official in connection with the containment or clean up of the fuel spill.

The most we will pay for any loss, damage or expense caused by an accidental fuel spill that is covered by this policy is the limit of liability for Protection & Indemnity as shown in the Declarations Page or \$800,000, whichever is less. This coverage is included as part of the Protection & Indemnity coverage, but does not increase our limit of liability for any occurrence covered by this policy.

This coverage does not apply to any liability caused by or resulting from any intentional act or willful misconduct of any insured; any claim for punitive damages, or any fines, penalties or cost of defense arising out of a criminal or civil violation of law or assessment by a governmental authority; or any liability which has been assumed by an insured under any contract or agreement whether oral or written.

- E. We will pay only up to the applicable limit of liability for any one occurrence.**
- F. We will settle or defend, as we consider appropriate, any claim or suit asking for damages covered under this section. Our duty to settle or defend**

ends when the applicable limit of liability for this coverage has been exhausted.

#### **G. EXCLUSIONS**

##### **We do not provide coverage for:**

1. Liability which has been assumed by you or any insured under any contract or agreement;
2. Liability to your spouse or any insured;
3. Damage to property of others or **bodily injury** liability arising out of the transportation of your yacht on land; however, we will cover physical damage to your yacht if damaged as a result of being transported overland - subject to the **Other Insurance** clause contained in this policy;
4. Any damage to reefs, natural barriers, beaches, marshlands or soft sand areas;
5. Any **bodily injury or property damage** arising out of the operation or use of any jet ski, hydrocycle, or similar type personal watercraft;
6. Any **bodily injury, loss of life or property damage** caused by any person while parasailing, kiteskiing or similar activity;
7. Any claim for punitive damages;
8. Any fines, penalties or costs of defense arising out of a criminal or civil violation of law or assessment by a governmental authority; or
9. Injuries for which benefits are required to be provided or are available under any state or federal compensation law or act.

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#### **SECTION SEVEN: MEDICAL PAYMENTS COVERAGE**

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We will pay for reasonable medical, ambulance, hospital, professional nursing and funeral costs which become necessary due to accidental **bodily injury** to any person. This coverage is provided only for persons injured while in, upon, boarding, or leaving your yacht. We will pay for only those costs incurred within one year of the date of accident.

Our payment will be reduced by any amounts paid or recoverable from the injured person's health plan or

medical insurance. Our payment will also be reduced by any amounts that we pay to, or on behalf of the injured person under any other section of this policy.

Payment under this coverage is not an admission of liability by you or us.

We will pay only up to the applicable limit of liability for each person.

**EXCLUSIONS**

We do not provide Medical Payments coverage for:

1. Responsibility assumed by you or any insured under any contract or agreement;
2. Anyone who is injured while the yacht is being transported overland;
3. Injury to a trespasser on your yacht;
4. An insured's employees or a paid captain or crew; or
5. Injuries for which benefits are required to be provided or are available under any state or federal compensation law or act.

**SECTION EIGHT: UNINSURED BOAT COVERAGE**

We will pay damage which you or any insured are legally entitled to recover from the owner or operator of an uninsured boat because of bodily injury caused by a collision/allision with the uninsured boat. The owner's or operator's liability for these damages must arise out of the ownership, maintenance, or use of the uninsured boat. "Allision" means the striking of a fixed object such as a dock, pier, buoy or a vessel at anchor by a moving vessel.

**EXCLUSIONS**

We do not provide uninsured boat coverage:

1. For any person struck by a yacht owned by you or any insured;
2. If any person or legal representative settles the bodily injury claim without our consent; or
3. To benefit any insurer or self-insurer under any workers' or workmen's compensation, disability benefits or similar law.

**SECTION NINE: COVERAGE FOR NON-OWNED AND NEWLY ACQUIRED YACHTS**

The coverage we provide for your yacht and motor applies to:

1. your legal liability as an individual for yachts and motors used with the owner's permission which are not owned, furnished, hired or chartered, or available for the regular use by you or any insured under this policy.
2. a newly acquired yacht and/or motor provided it does not exceed 50 MPH, it is reported to us

within 15 days of acquisition and is eligible for Traveler's marine programs. The physical damage coverage shall not exceed the purchase price of the newly acquired yacht. This coverage does not apply to jet skis, hydrocycles, or similar type personal watercraft.

The coverage provided under this section of the policy shall be deemed to be excess insurance over any other valid and collectible insurance.

**SECTION TEN: YOUR DUTIES AFTER A LOSS****A. NOTICE OF LOSS**

1. You must give notice of any loss as soon as practicable to either us or our authorized representative. If the loss is by theft or vandalism, you must also notify the Coast Guard or other police authority having jurisdiction.
2. We must be told: (a) the name of the insured; (b) your policy number; (c) all details of the loss including where and how the event occurred; and (d) the name and address of any witness.
3. On losses involving Protection & Indemnity, Uninsured Boats or Medical Payments, you must: (a) tell us the names and addresses of all

claimants and witnesses; and (b) promptly send us all notices or legal papers relating to the loss.

#### **B. ASSISTANCE IN LOSS SETTLEMENT - PROTECTION & INDEMNITY OR MEDICAL PAYMENTS COVERAGE**

1. **You must help us:** (a) settle all claims; (b) enforce our right when others may be liable; and (c) furnish medical reports and submit to physical examinations.
2. **At our request,** you must: (a) attend hearings and trials; (b) secure and give evidence; and (c) make every effort to obtain attendance of witnesses.

We will reimburse you up to \$100 a day for loss of earnings because of attendance at hearings or trials at our request.

#### **C. CONTRACTUAL LIABILITY**

Without our written consent, we will not provide coverage if you: (a) assume any liability; (b) incur any expense for which we may not be liable; or (c) impair our right to recover claims against others.

#### **D. CLAIMS AGAINST OTHERS**

If we believe a claim maybe recovered from others, we may pay you and assume your rights to such recoveries.

1. **You agree:** (a) not to waive, after loss, any rights you may have against others; and to assist us in all ways possible to recover amounts paid under this policy.
2. **We may:** (a) at our own expense, take over your rights to the extent of our payment; and (b) retain or collect all premiums paid or due.

#### **E. EXAMINATION UNDER OATH**

You must: (1) submit to questioning under oath as often as we may reasonably require; and (2) assist us in securing testimony from others.

#### **F. PROOF OF LOSS - PHYSICAL DAMAGE**

You must send us, within 60 days after we ask, a statement sworn to the best of your knowledge and belief, listing:

1. the time and cause of loss;
2. the interest of anyone in the property;
3. all liens and mortgages on the property;
4. other insurance that may cover the loss;
5. title changes;
6. detailed estimates of the value of the property and for the repair of damage; and
7. evidence of the amount of loss, including affidavits.

#### **G. PROTECTION OF PROPERTY-PHYSICAL DAMAGE**

If a loss occurs, you must take all lawful, reasonable steps, including making any necessary temporary repairs to protect the property from further damage. We will share the reasonable expenses incurred in proportion to our interests.

#### **H. SUPPORT OF CLAIM**

You must support any claim by: (1) ALLOWING US TO INSPECT THE DAMAGED PROPERTY BEFORE IT IS DISPOSED OF OR REPAIRED; (2) producing records to verify the claim and its amount; and (3) permitting copies of records to be made.

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### **SECTION ELEVEN: LOSS SETTLEMENT CONDITIONS**

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#### **A. LOSS ADJUSTMENT-PHYSICAL DAMAGE**

We will not pay more than the least of: (1) the limit of liability for the covered property; or (2) the amount for which the covered property could reasonably be repaired to its condition just prior to the loss.

We may pay for the loss in money, or replace the damaged property according to the Repair Clause

contained in Section Three. We will notify you of our choice within 30 days after you submit Proof of Loss.

#### **B. DESTRUCTION/REMOVAL ORDERED BY AUTHORITIES**

We will pay for the destruction or removal of covered property when it presents an attractive nuisance or is ordered by any civil authority.

**C. APPRAISAL - PHYSICAL DAMAGE**

If you and we fail to agree on the amount of loss, either may demand an appraisal of loss subject to the following conditions:

1. Each party will choose a competent, impartial appraiser within 20 days after receiving written request from the other.
2. The appraisers shall appoint a competent, impartial umpire. If they cannot agree on an umpire within 15 days, you or we may ask a court judge of the state of your residence to appoint an umpire.
3. If the two appraisers cannot agree on the amount of the loss, they will ask the umpire for a decision.
4. The written agreement of any two will determine the amount to be paid.
5. Both you and we shall each pay any costs of the appraisers each has selected, plus share any expenses or costs of the umpire and court equally.

**D. LOSS PAYEE**

If a loss payee is named in this policy, any loss payable will be paid to the loss payee and you, as interests appear. If more than one loss payee is named, the order of payment will be the same as the order or precedence of the loss payees. We cover the interests of the loss payee, unless the loss results from fraudulent acts or omissions on your part.

**E. RESERVATION OF RIGHTS**

When we investigate, compromise, or pay any claim, it shall not be construed to admit liability either by you or us.

**F. ABANDONMENT OF PROPERTY**

We are not liable for any property abandoned by an insured.

**G. RIGHT TO SALVAGE**

If we pay a total loss or constructive total loss of your yacht, we reserve the right to take possession of the remains or its proceeds. You agree to transfer title of that property to us or to salvage buyer designated by us.

This policy is signed for the company which is the insurer under this policy.

Bruce A. Backberg  
Senior Vice President and  
Corporate Secretary

Joseph Lacher  
Chief Executive Officer  
Personal Lines

**IN WITNESS WHEREOF, the Company has executed and attested these presents.**

# **EXHIBIT B**



P O Box 60015  
New Orleans, LA 70160

Donald F. Llewellyn  
Technical Specialist  
Travelers Marine  
504-832-7314 (phone)  
877-801-9685 (fax)  
Toll Free: 800-842-6440, ext 7314  
Email: Donald.f.llewellyn@travelers.com



December 10, 2007

**VIA CERTIFIED MAIL**

Hank Bernbaum  
330 S. Green Bay Rd  
Lake Forest IL 60045

CLAIM NUMBER: L8N8472  
POLICYHOLDERS: Hank Bernbaum  
DATE OF LOSS: 7/23/2006  
POLICY NUMBER: 945707517-840-1  
POLICY PERIOD: 01/06/2006 – 01/06/2007  
UNDERWRITING ENTITY: The Standard Fire Insurance Company

Dear Mr. Bernbaum:

We are writing to inform you that after an extensive investigation of this claim and a careful review of your policy issued by The Standard Fire Insurance Company ("Travelers") we have determined that your policy does not cover the damages being claimed. The reasons for this determination are set forth more fully below.

You presented a claim on August 2, 2007 for hull damages to your Farr 395 racing sloop which reportedly occurred on July 23, 2006. Upon being notified of the claim, Travelers engaged Chris Kelly, a certified marine surveyor, to inspect the hull and determine the cause of the loss. Mr. Kelly inspected the vessel at Hi-Tech Boat Works on August 8, 2007.

Due to the advanced composite construction of the hull and the damages being displayed, we opted to employ the services of a construction expert, Bruce Pfund, to further investigate the cause of loss. After extensive analysis including hull coupon sampling and laboratory testing, Mr. Pfund concluded that, given the absence of collision or grounding, the hull failure(s) are attributable to loads experienced during racing in reported heavy weather that exceeded the local strength of the vessel's construction.

We refer you to Your Travelers Yacht Policy form 44101 (01-07) which provides in relevant part:

## **SECTION THREE: PHYSICAL DAMAGE COVERAGE FOR YOUR YACHT AND EQUIPMENT**

### **B. PHYSICAL DAMAGE COVERAGES**

We cover the following property against accidental direct physical loss or damage except as specifically excluded:

1. **Your yacht** scheduled in the declarations.

### **C. EXCLUSIONS**

**We do not cover loss or damage resulting from:**

1. Wear and tear.

Given the design construction and intended use of a Farr 395 racing sloop and the fact that this vessel was commissioned in January 2001; it is our considered opinion and conclusion that the damages are not attributable to a single fortuitous occurrence but are more indicative of normal wear and tear over the service life of the hull.

Based upon our investigation Travelers has determined that the cause of the hull failure(s) was due to normal wear and tear. As set forth above, your policy does not cover loss or damage resulting from wear and tear.

Further your policy also provides:

## **SECTION TEN: YOUR DUTIES AFTER A LOSS**

### **A. NOTICE OF LOSS**

1. **You** must give notice of any loss as soon as practicable to either **us** or **our** authorized representative. If loss is by theft or vandalism, **you** must also notify the Coast Guard or other police authority having jurisdiction.

### **H. SUPPORT OF CLAIM**

**You** must support any claim by: (1) **ALLOWING US TO INSPECT THE  
DAMAGED PROPERTY BEFORE IT IS DISPOSED OF OR REPAIRED;**

Because we did not receive notice of the loss for more than a year after the alleged date of loss, your notice to us was untimely. Further, by not notifying us of the loss at the time it occurred, you prejudiced our right to promptly investigate the loss and may have caused additional damage by continuing to race the yacht.

A check will be issued to you to cover the cost of hull repairs in the areas where coupon samples were obtained. This payment will arrive under separate cover.

There may be other terms, conditions and exclusions in the policy that apply to this claim. Our reference to specific provision(s) of your policy does not, nor is it intended to, waive any of the rights that Travelers may have under the terms of your insurance policy or at law. All rights which Travelers may have under the terms of your insurance policy or at law are specifically reserved. We expressly do not waive our right to deny coverage for any other valid reason.

Our position on this matter is based upon our assessment of the information we gathered during our investigation of this loss. If you have any additional information that you believe we have not considered, or if you believe there is a theory of coverage that we have overlooked, please forward that information to us for consideration.

Furthermore, if you do not agree with this decision, you may contact the Illinois Department of Financial & Professional Regulation Division of Insurance at:

[https://www.ins.state.il.us/WebComplaints.nsf/Pc\\_Webform?OpenForm](https://www.ins.state.il.us/WebComplaints.nsf/Pc_Webform?OpenForm)

Should you have questions, please call me at 504.832.7314.

Sincerely,

Donald F. Llewellyn  
Technical Claim Specialist  
Travelers Property Casualty Insurance Company of America

cc: Agent